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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,705	02/01/2005	Andre Van Dyk	2004_1032A	4374
513	7590	03/31/2006	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			HOLMAN, JOHN D	
2033 K STREET N. W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20006-1021			3643	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,705	<b>Applicant(s)</b> VAN DYK ET AL.	
	<b>Examiner</b> John D. Holman	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 55-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/2/2004</u> . | 6) <input type="checkbox"/> Other: ____  |

### DETAILED ACTION

Applicant's election without traverse of Group II, claims 55-64, in the reply filed on 3/15/2006 is acknowledged.

Claims 35-54 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method of breaking rock, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/15/2006.

Claims 1-34 are cancelled in a preliminary amendment filed on 7/2/2004.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 55-64 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson (US 5765923).

Regarding claim 55, Watson discloses an apparatus comprising a first cartridge (25) with a base (27) and a sidewall, a propellant (30), a discontinuous relatively weaker region of the container (28) formed at a junction between the wall and the base (27), and a deforming member (21) located outside the cartridge. See figure 2 and 3.

Regarding claim 56, Watson discloses an apparatus wherein the cartridge (5) is shaped to direct a wave of pressure towards a periphery of the base. See figure 1 and column 2, line 50-56.

Regarding claim 57, Watson discloses an apparatus comprising a charge (30) inside the cartridge (5). See figure 1 and column 1, line 59-63.

Regarding claim 58, Watson discloses an apparatus wherein the cartridge (25) is made from a plastically deformable material. See column 12, line 54-60.

Regarding claim 59, Watson discloses an apparatus wherein the base (24) is made from a material having greater density than the density of the propellant. See column 4, line 67 and column 5, line 1.

Regarding claim 60, Watson discloses an apparatus wherein the member is turned into a high pressure jet. See column 9, line 65-67.

Regarding claim 61, Watson discloses an apparatus where in an explosive which acts directly on the member is used to generate a high pressure jet of the material. See column 9, line 65-67.

Regarding claim 62, Watson discloses an apparatus comprising an explosive (30) and a control unit, which initiates the propellant at a first predetermined time and detonates the explosive at a second predetermined time. See figure 1 and column 2, lines 43-56.

Regarding claim 63, Watson discloses an apparatus comprising a first and second initiators for initiating the propellant at a respective first and second point. See column 2, line 50-56.

Regarding claim 64, Watson discloses an apparatus comprising a second cartridge (34) forming an enclosure for a propellant (39). See figure 1 and column 10, line 39-44.

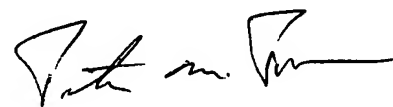
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Holman whose telephone number is 571 272-2754. The examiner can normally be reached on Monday through Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDH



PETER M. POON  
SUPERVISORY PATENT EXAMINER

3/29/06